

LAW CURRICULUM USING THE TROPICS AS A THEMATIC LENS; OR, HOW TO MEET CONTEMPORARY CHALLENGES IN HIGHER EDUCATION

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ABSTRACT

The distinctiveness agenda in higher education is an issue that is not going away. In the recent national discussion about the discipline standards for law, a discipline-specific take on this was evident as various law schools expressed concern about homogenization of law degrees under the forthcoming standards regime. While some perceive distinctiveness as a shallow marketing ploy, this paper argues that it has potential to shift our tradition-bound content-focussed law curriculum into a more sophisticated realm through adoption of a thematic lens to form a cohesive conceptual foundation for the LLB. Such an approach to curriculum design has additional benefits of meeting a variety of contemporary policy issues facing higher education. This paper reports on approaches to curriculum in terms of distinctiveness, of a selection of Australian law schools and reports on how the James Cook University LLB is working with JCU's 'tropical agenda' to inform its curriculum design.

I. INTRODUCTION

In an address to the International Association of Law Schools in 2010, Tony Connolly from ANU gave an overview of a 'strategic approach' to curriculum development being undertaken in this Law School. He situated the LLB curriculum as traditionally Anglo-American in 'content, structure and pedagogy'¹ and described a more strategic approach to curriculum reform being undertaken at ANU.

He outlined the basis for this reform as being that:

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¹ Anthony Connolly, 'Renewing the Law School Curriculum: The Benefits of a Strategic Approach' Paper delivered at International Association of Law Schools Conference on Teaching, Legal Education and Strategic Planning, Buenos Aires 11-13 April, 2011.

too much has changed over the past few years in relation to the nature of legal practice, the mindset of law students, the expectations of government, and in our very understanding of what constitutes effective legal education for that to remain a viable approach to curriculum design... [and that the] style of curriculum reform pursued to date [has been] ad hoc, largely reactive, and narrowly focused.

There has indeed been a lot written and many studies undertaken of Australian legal education over the past couple of decades. These observations by Tony Connolly however accurately identify a fairly static and content-centric approach to curriculum that has dominated the Australian LLB.

Today I am going to use Tony Connolly's words about the ANU LLB reform as a starting point to tell a parallel story about the 'refresh' of the JCU LLB. His words about your own project resonate with the approach we are working with in North Queensland – in a small law school in tropical Australia. Connolly says:

We have come to the view that something new is called for in our approach to curriculum development – something more fundamental in its conception, more holistic in its concerns, more systematic in its methodology, and, by virtue of these things, more challenging and, potentially, more transformative in its outcomes than the approach previously engaged in.²

Today I will introduce JCU's whole of university approach to what it has called the 'refresh' of its curricula. In particular, this refresh takes place against the background of the distinctiveness agenda in Australian higher education, the new standards regime under the recently formed TEQSA (allied with the AQF), the push by government and industry for 'work ready' graduates, rapid changes in ICT, contemporary conceptual focus of higher education both nationally and internationally on sustainability, internationalization and Indigenous perspectives, and the somewhat more familiar curricular design tool of university graduate attributes. No doubt these factors and more have imbued the ANU LLB reform as they have the JCU refresh.

² Ibid, 2.

There has of course been talk within higher education of the dumbing down of curriculum as a result of this backdrop – particularly standards. The debate nationally within law schools – that I have witnessed during consultations surrounding the discipline standards for law over the last 12 months – has reflected this. I think however that rather than dumbing down, we have an opportunity for the kind of transformation that Tony Connolly spoke of.

In 2002, H Lynn Erickson, a scholar in school curriculum in the US³ observed that:

...the tension to meet academic standards is high because the stakes are high. General views of education are fueled by publication of ...test scores... The legislative push for ...vouchers and the creation of a plethora of private...models...chips away at the traditional public...model. National and state standards are developed to bring structure to the curriculum of what students should know and be able to do.

These comments were made in the US school context, nearly a decade ago but they could just as easily have been made about the contemporary higher education context in Australia.

Erickson goes on to say that the pressure of meeting academic standards is high but that there is a tendency to interpret ‘raising standards’ as ‘learning more content.’⁴ However, ‘the standards and newer assessments assume that students will demonstrate complex thinking, deeper understanding and sophisticated performance.’⁵

Erickson could be describing the move towards discipline standards in the Australian tertiary context and on this basis, her proposed solution to meeting national standards within her educational context provides inspiration for the means by which the LLB might evolve from the traditional focus on content while incorporating elements of contemporary curriculum design.

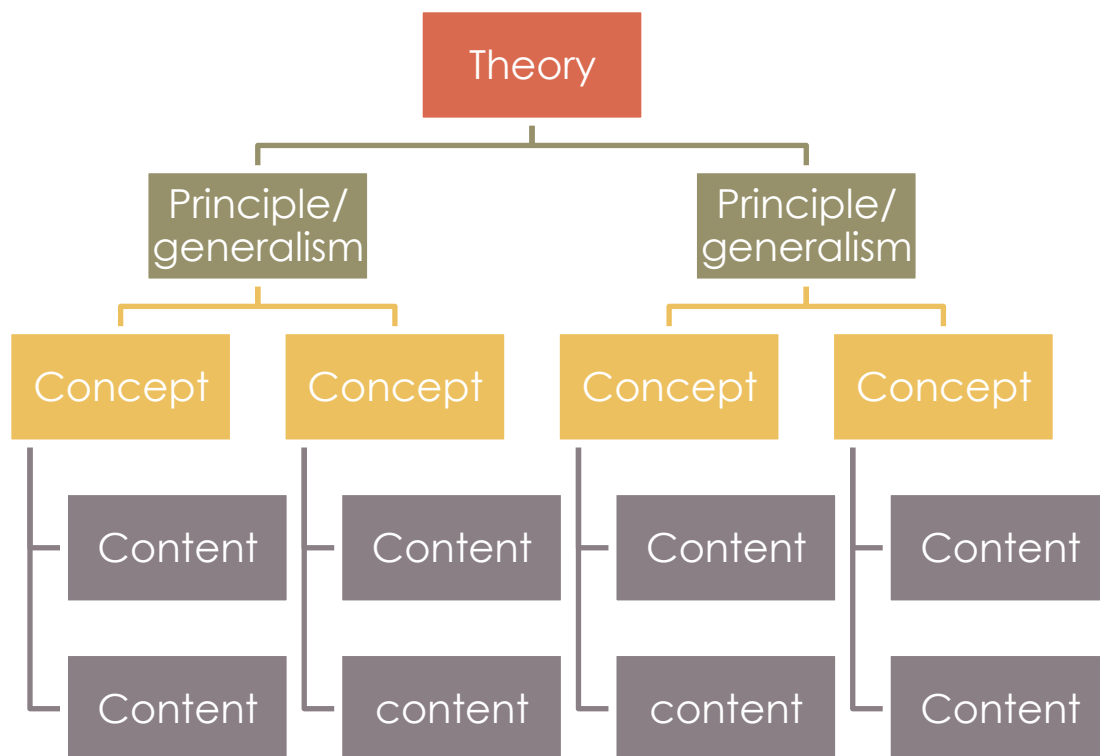
Of particular resonance is Erickson’s description of the structure of knowledge and traditional curriculum in terms of facts and topics as lower order thinking skills –

³ H Lynn Erickson, *Concept-based Curriculum and Instruction: Teaching Beyond the Facts* (Sage, 2002).

⁴ Ibid, 2.

⁵ Ibid, xi.

content. Acknowledging that these are important, she illustrates that above these sit concepts and theory as higher order analytical skills or approaches.⁶



This is the approach that we are aiming to work with in the refresh of the JCU LLB – developing our mandate as the university for the tropics into a ‘thematic lens’ for promoting the ‘complex thinking, deeper understanding and sophisticated performance’ of which Erickson speaks; and to generate a legal education that is ‘more challenging and, potentially, more transformative in its outcomes’ as described by Tony Connolly. Importantly though, this is an approach that does not sacrifice core discipline knowledge.

Today I will outline the overall refresh project, then look at two stages of our refresh – first, how we sought to understand the approach to LLB curriculum design in Australia and to find a place for our LLB amongst its competitors nationally, and second, how we might possibly interpret the tropics as a meaningful lens through which to teach law.

II. JCU CURRICULUM REFRESH

⁶ Ibid, 4-5.

In 2008, JCU received funding from DEWR Diversity and Structural Adjustment Fund to refresh its curriculum to reinforce its distinctiveness as Australia's university for the tropics. This is more substantial than a passing fad or marketing ploy – JCU is mandated by its statute to be the university for the tropics. The refresh takes therefore place within the context of the university's strategic plan and the so-called 'four tropical pillars' of research and teaching focus. Sitting under these are 14 different curricular 'themes' that are to be imbued within our programs. Most of these would be familiar to anyone engaged in contemporary higher education curricula. I refer to these as a 'shopping list' of curricular elements:

Internationalization (of courses, + student/staff mobility); sustainability; Indigenous perspectives; passion for learning; clear links to research; innovative use of ICT; FYE; flexibility in offerings; graduate attributes in each course; external reference groups; access pathways for equity groups; work integrated learning; reviewed assessment practices and progression criteria

As mentioned, all of these come within the umbrella concept of the tropics as our point of distinctiveness.

III. A DISTINCTIVE LLB?

Distinctiveness in university degrees is not a new agenda. JCU has been particularly focused on this though for some years in terms of engaging with our legislated purpose to be the university for the tropics. The tropics has been identified as the way in which all of our degrees will be distinctive. You can imagine however that this has been somewhat challenging for the LLB.

As a first step in refreshing our curriculum in terms of the tropics and the curricular elements, we sought to identify a place for our own law program within the 32 law schools in Australia. We reviewed the websites of Australian law schools and selected 10 that we felt represented to the world particular elements of the JCU curriculum refresh, and which reflected our own student cohort or regional location. We were interested in identifying how their approach to curriculum might be perceived as distinctive.

Johnstone and Vignaendra in 2003 undertook a similar exercise nationwide.⁷ They cited Australian law schools' responses to finding a 'niche' or being distinctive. While some sought to 'develop their own particular vision of legal education', others described 'a long-sustained approach to legal education'.⁸ Importantly, one school said that it was 'not just positioning and distinguishing, it is all pedagogically driven...We are not just inventing diversities. I think that it's fair to say that there is a serious scholarly basis which underlies what we are doing'.⁹ This is certainly the approach we have adopted in our own refresh.

While not stated explicitly by the institutions involved, the different types of 'distinctiveness' that seemed to be represented by law schools on their websites aligns somewhat with different ideological approaches to curriculum design:

- a) scholar academic (discipline based);
- b) social efficiency (practical skills);
- c) learner centred (external cohort); and
- d) social reconstruction (service to community).¹⁰

These approaches provide a useful point of reference for curriculum design, and give clues about how the curriculum might be developed from one of these particular standpoints. It is pointed out that these different categories are loose, and they overlap. However reviewing the websites of different law schools highlights particular emphases in their approach to their LLBs.

The discipline focus took a number of different forms. Deakin University for example has deliberately positioned itself as a commercial degree, supported also with practical skills. In this case, the practical skills align with the commercial focus.¹¹ In contrast, Murdoch University takes a thematic approach of internationalisation both within elective subjects but also in facilitating international links and opportunity for student travel.¹² Charles Darwin University focuses on

⁷ Richard Johnstone and Sumitra Vignaendra, *Learning Outcomes and Curriculum Development in Law* Report commissioned by the Australian Universities Teaching Committee (2003)

⁸ Ibid, 32.

⁹ Ibid, 31-2.

¹⁰ Michael Stephen Schiro, *Curriculum Theory: Conflicting Visions and Enduring Concerns* (Sage Publications, 2008), 4-6

¹¹ *Practical Orientation* Deakin University School of Law
<http://www.deakin.edu.au/buslaw/law/undergrad/practical.php>.

¹² *Dean's Welcome Message* Murdoch University School of Law
<http://www.law.murdoch.edu.au/welcome.html>.

‘issues of special significance to the Northern Territory, including Aboriginal legal issues and South East Asian law’.¹³

Griffith University takes the discipline focus in a different direction again, vertically embedding ‘ethics, legal theory, Indigenous issues, and internationalisation’.¹⁴ This aspect of the Griffith LLB will inevitably overlap with the community service focus.

Practical skills likewise were represented as a broader, more overarching course attribute, or a more particular one – depending on the school. Of the schools surveyed, QUT probably has the most identifiable and embedded approach to this. Having branded itself the ‘university for the real world’, the entire curriculum is designed with ‘real world practice’ embedded within it. The most striking point of distinctiveness in these terms, is the requirement that every student has the opportunity to participate in a work integrated learning subject.¹⁵ Legal skills however are also included throughout the curriculum, taught by ‘real-world academics’.

Service to community is reflected in terms of a social justice agenda and ethical persona. Griffith (where ‘social justice is hard wired into [their] values’¹⁶) and Southern Cross Universities (where the School of Law and Justice aims to ‘enhance the cultural, social, economic and intellectual development’ of the region¹⁷) could be regarded as having the strongest focus on this idea, and Charles Darwin University’s focus on issues of relevance to the Northern Territory, including Indigenous legal issues, may likewise be seen to represent distinctiveness in terms of service to community. Griffith University also aims to ‘nurture students that are passionate, idealistic, and committed to critical thinking. We also want our students to respect diversity, to value tolerance for different ideas and ways of understanding and to, above all, respect justice.’¹⁸

¹³ *Home* Charles Darwin University School of Law and Business

<http://www.cdu.edu.au/lawbusiness/index.html>

¹⁴ *Undergraduate Programs* Griffith University <http://www.griffith.edu.au/criminology-law/griffith-law-school/programs-courses/undergraduate-programs>

¹⁵ *Work Integrated Learning* QUT Law School <http://www.law.qut.edu.au/about/wil/>.

¹⁶ *Social Justice* Griffith University Criminology and Law <http://www.griffith.edu.au/criminology-law/social-justice>.

¹⁷ *Research and Scholarly Publications* Southern Cross University School of Law and Justice <http://epubs.scu.edu.au/law/>.

¹⁸ *Teaching Expertise* Griffith University Criminology and Law <http://www.griffith.edu.au/criminology-law/law/teaching-expertise> >.

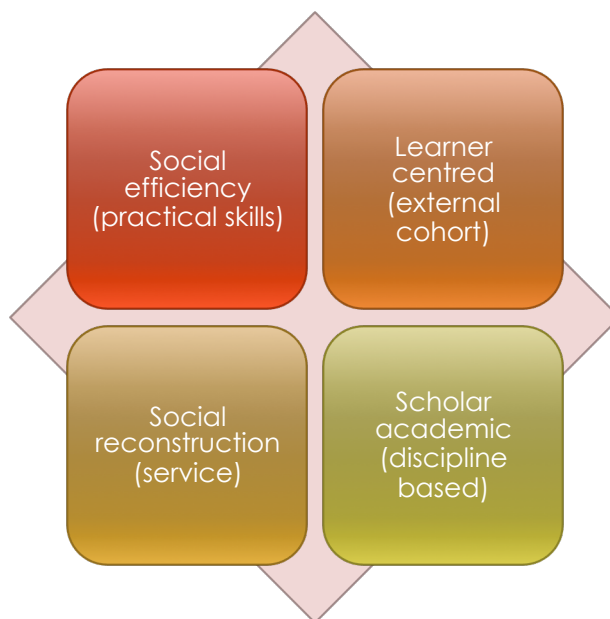
Many of the law school sites surveyed represent their external offerings as distinctive – often through university branding rather than the school itself. Southern Cross University has promoted itself as a quality provider of distance education. Likewise, Universities of Southern Queensland and New England cater specifically for external students.¹⁹

These four approaches to curriculum are reflected in the web presence of each law school in terms of the JCU Curriculum Refresh themes. For example Griffith and Southern Cross Universities are focused on serving community and so ethics and social justice, through for example Indigenous perspectives and pathways, are embedded within their degrees. For schools that see their location as central to serving community, there is a focus on external delivery and flexibility.

Our project team had some considerable discussion about where any ‘gap’ might lie, in terms of JCU’s curriculum priorities or ideological approaches to curriculum. In terms of the JCU refresh themes, it was observed that in the websites surveyed, there was little if any mention of ‘sustainability’ within the curriculum. Accordingly, it seemed that there was scope to interpret this theme in a way that would provide a thematic focus for curriculum that was distinctive amongst the offerings of the surveyed institutions.

Consequently, the proposed outcome of the next phase of the project is to adopt and embed ‘sustainability’ as an underlying theme in all awards offered in the School to provide it with both an area of distinctiveness and perhaps to tease out the ideological approach to our curriculum. This phase of the project is occurring now. This begs the question however of how this might feed in to the overarching focus of the tropics. This would require representing JCU’s unique tropical focus through the conceptual device, or thematic lens of sustainability. To do so though requires an appreciation of what the tropics might mean within our discipline.

¹⁹ ‘Study Law by Distance Education’ Southern Cross University School of Law and Justice <http://www.scu.edu.au/schools/law/index.php/29>; ‘Distance Education’ *University of New England* <http://www.une.edu.au/about/off-campus-ed/>; ‘Welcome to Law at USQ’ *University of Southern Queensland Faculty of Business and Law* <http://www.usq.edu.au/business-law/schools/law>.



IV. TROPICAL LAW

I have been lucky enough to have spent the last 12 months on half time secondment as a curriculum scholar – a role designed to support the curriculum renewal process at JCU. In this role, I have been researching the idea of the tropics to try to conceptualise this in a way that is meaningful for curriculum development in my faculty, of law, business and creative arts. My rationale for scoping my curriculum scholar project in these terms has been the lack of resonance of the tropics within our discipline and, like Tony Connolly and the ANU experience, my realization that we need something more than tinkering with the edges of our degree – we need a substantial and strategic approach to design a clear vision of our curriculum.

Without taking you fully on my journey into the realms of cultural geography, a review of the literature shows how the tropics is capable of being understood as much more than a geographical band across the earth's surface. In fact, the tropics has a deep cultural underpinning grounded in European notions of self. From the time of the ancient Greeks, the climate of the tropics was perceived as hostile and its peoples exotic. This theme continued and informed the voyages of discovery and approaches to the so called new world. The tropics was simultaneously fecund and diverse, as well as degenerate, depraved, abnormal, foreboding, dangerous, deceptive and

pestilent.²⁰ It was a place of immorality where the white man (sic) would slip into indolence and sexual proclivity – a place to be tamed and controlled. This informed the science and medicine of Victorian times and these views existed into the 20th century, including in the seminal work of French geographer Pierre Gourou in 1949.

All this recognizes that the tropics is so much more than a place. Indeed geographers and climate scientists disagree about its definition in scientific terms – the tropics might be defined based on average temperature, rainfall, soil type, astronomical location – the list goes on. On some reckonings, Townsville itself would be excluded from a tropical location. Rather than limit our thinking to a physical and static location, these ‘tropical imaginings’ can lead into a different conceptual realm.

The so-called tropics of the mind is perhaps most influenced by Orientalism and Edward Said’s thinking about the discourse surrounding things oriental as a European positioning and creation of something that didn’t actually exist other than within the European mind. Like “darkest Africa”, the “Orient” and the “Pacific world”²¹ the ‘geographical imaginary of the tropics [is] an interpretive frame, constructed, enacted and disciplined in the process of European expansion into the tropical world’.²² As JCU deepens its understanding of its identity as the university for the tropics, this traditional imagery needs to be challenged and re-imagined in a positive sense.

And this is where the tropics takes on meaning as a conceptual lens for our curriculum.

1. Tropics is not only a literal place, but is also an idea that still encompasses exclusion and exploitation and ‘otherness’ in terms of a European hegemony.
2. To become the university for the tropics involves engaging in teaching (and research) that seeks to counter this historical approach through a focus on countering the negative space of the idea, focusing instead on sustainability and representation of peoples of the tropics in their own terms.

²⁰ See eg: David Arnold, ‘“Illusory Riches”: Representations of the Tropical World, 1840-1950’ 21(1) (2000) *Singapore Journal of Tropical Geography* 6, 6; Stephen Frenkel, ‘Geography, Empire, and Environmental Determinism’ 82(2) (1992) *Geographical Review* 143; Mike Hulme, ‘The Conquering of Climate: Discourses of Fear and their Dissolution’ 174(1) (2008) *The Geographical Journal* 5; David Livingstone, ‘Tropical Climate and Moral Hygiene: The Anatomy of a Victorian Debate’ 32 (1) (1999) 93.

²¹ David N Livingstone, ‘Tropical Hermeneutics: Fragments for a Historical Narrative an Afterword’ 21(1) (2000) *Singapore Journal of Tropical Geography* 92, 92.

²² Felix Driver and Brenda Yeoh, ‘Constructing the Tropics: Introduction’ *Singapore Journal of Tropical Geography* 21(1) (2000) 1, 4, making reference to Livingstone.

3. In terms of the LLB, this means teaching and researching critically – challenging traditional parameters of colonialism and empire and focussing on models of sustainability in governance; economy and finance; community development; and the environment. The tropics viewed in this sense has potential to bring together diversity of experience and expertise of the law school’s academic staff and its subject program through a common narrative of the experience and vision of those from within the tropics, rather than that of those outside around the key organizing principles of governance, economy, community and environment.
 - a. Governance: foundation subjects, admin, constitutional, public international law, ethics
 - b. Environment: land, environmental, mining, public international law, law of the sea, climate change
 - c. Community: crim, torts, human rights, law in context, Indigenous people and the law
 - d. Economic/financial systems: contract, land commercial, equity, trusts, company, tax, industrial law
4. This wider view also affords an approach to knowledge and intellectual endeavor – one that likewise reflects inclusiveness and rejects exploitation. In the first sense, Aboriginal and Torres Strait Islander knowledges should be represented in curriculum. In the latter sense, intellectual endeavor represents the coming together of the known and the imagined.

V. CONCLUSION

Taking the thematic lens of the tropics in a conceptual rather than a literal (geographical) sense can provide a number of concepts through which to filter the LLB curriculum. Through an overarching statement of what the tropics means for the LLB, concepts that form the foundation of the curriculum refresh project can then emerge to provide a rich environment within which the content of each subject is presented. Rather than learning the elements of each subject solely through cases or legislation, their exceptions and evolution in a decontextualized environment, a focus on say sustainability – a common theme throughout the history of the tropical world – can guide teaching and therefore learning.

I have read Tony Connolly's comments on strategic planning in this light. The concepts we associate with the tropics – and their development into a thematic lens through which to view the law – provides us with the strategic focus for curriculum development. It provides an overarching story within which each of us can situate our own subject so that our students are clear on where each part of their learning fits.

Using such a device – whether a strategic vision or a thematic lens – curriculum starts from the macro rather than the micro. In the past, we have accepted the content of each subject at face value and have selected various graduate attributes that represent what each of us does, as a representation of our curriculum. To continue to operate this way, we face an ever more complex set of overlaying policy or principles – such as the discipline standards – to which we are required to fit our degree. This method provides a more integrated degree program (rather than a series of subjects) that is deliberately structured to build on the theme towards a shared goal.

Our students report experiencing an atomistic degree where there is a lack of connection from one subject to the next. Through focus on a thematic lens, we have the opportunity to provide a meaning and context – a narrative and sense of place – that underpin learning and afford the opportunity for a connectedness with learning and the bigger picture of the law.

I close today with an image that to me illustrates the potential in using a thematic lens as a creative spark for generating a sustainable, intellectual and stimulating curriculum.

This is a painting by Fred Williams. The National Gallery is presently exhibiting his work. In the exhibition, reference is made to his time spent in the tropics – generating a new creative output. In 1996 I worked on a catalogue for an exhibition that was put together in the Cairns Regional Gallery, called *Escape Artists: Modernists in the Tropics*, that toured nationally. (The catalogue is in the ANU Art Library.) The exhibition showed how some of the greatest modern Australian artists responded to the stimulus of the tropics during their travel to the north.

As I toured the exhibition, it occurred to me that like the visual arts, our (academic) intellectual life is creative. As experienced by Fred Williams and his fellow artists, it serves us well to expose ourselves to new concepts through which to test and

reposition our understanding of our discipline and our craft. This is the ‘thematic lens’ and for us, this lens is the tropics.